



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

March 26, 2004

Ms. Jennifer Barnett
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
500 North Akard
Dallas, Texas 75201

OR2004-2359

Dear Ms. Barnett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 198126.

The City of Seagoville (the "city"), which you represent, received a request for the complete personnel file of a named individual. You claim that the submitted information is excepted from disclosure under sections 552.101, 552.102, 552.117, and 552.119 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information deemed confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. You claim that the submitted information is excepted from disclosure under section 143.089 of the Local Government Code. The provisions of chapter 143 of the Local Government Code only apply to civil service cities. Since the City of Seagoville is not a civil service city, section 143.089 is inapplicable to the submitted information. We will therefore address the city's remaining arguments against disclosure for the submitted information.

Next, the submitted documents include a W-4 form, a Texas Commission on Law Enforcement Officer Standards and Education "F-5" Form, and an I-9 Form. Employee W-4 forms are confidential under section 6103(a) of title 26 of the United States Code. *See* 26 U.S.C. § 6103(a); *see also* Open Records Decision No. 600 (1992). Accordingly, the city must withhold the submitted W-4 form under section 552.101 as information made confidential by law.

An F-5 Form is made confidential by section 1701.454 of the Occupations Code. Section 1701.454 of the Occupations Code provides in relevant part:

(a) A report or statement submitted to the [Texas Commission on Law Enforcement Officer Standards and Education] under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

The submitted F-5 Form does not meet the criteria for disclosure as provided under section 1701.454. Therefore, you must withhold the F-5 Form pursuant to section 552.101 of the Government Code in conjunction with section 1701.454 of the Occupations Code.

Section 1324a of title 8 of the United States Code provides that an Employment Eligibility Verification Form I-9 “may not be used for purposes other than for enforcement of this chapter” and for enforcement of other federal statutes governing crime and criminal investigations. *See* 8 U.S.C. § 1324a(b)(5); *see also* 8 C.F.R. § 274a.2(b)(4). The release of the I-9 Form in response to this request for information would be “for purposes other than for enforcement” of the referenced federal statutes. Therefore, the city must withhold the Form I-9 under section 552.101 of the Government Code in conjunction with federal law.

You also claim that some of the submitted information is excepted from disclosure under section 552.102 of the Government Code. Section 552.102 excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” In *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.—Austin 1983, writ ref’d n.r.e.), the court ruled that the test to be applied to information claimed to be protected under section 552.102 is the same as the test formulated by the Texas Supreme Court in *Industrial Foundation* for information claimed to be protected under the doctrine of common-law privacy as incorporated by section 552.101. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public under section 552.102 when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

You assert that information that reveals the criminal acts committed by the former employee is excepted from disclosure under common law privacy. Although a compilation of a person’s criminal history generally implicates that individual’s right to privacy, we find that, in this instance, the public has a legitimate interest in the former officer’s background and job performance. *See* Open Records Decision Nos. 470 (1987) (public has legitimate interest in job qualifications of public employees), 444 (1986) (concluding that public has obvious interest in having access to information concerning performances of governmental

employees, particularly employees who hold positions as sensitive as those held by members of law enforcement), 423 at 2 (1984) (scope of public employee privacy is narrow). *But see United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989) (concluding that criminal history compilation is generally protected by common law privacy). Therefore, you may not withhold any of the information you have marked under common law privacy. We note, however, that the submitted records contain the former employee's personal financial information. *See* Open Records Decision No. 545 (1990) (deferred compensation information, mortgage payments, assets, bills, and credit history). Upon review, we find that there is no legitimate public interest in the release of this information. We have marked the personal financial information that must be withheld under common law privacy.

Section 552.117(a)(2) excepts from required public disclosure the current and former home address and telephone number, social security number, and the family member information of a peace officer whether the officer made an election under section 552.024 of the Government Code or complies with section 552.1175 of the Government Code. Therefore, the department must withhold the information we have marked under section 552.117(a)(2). We note that section 552.117 does not encompass an employee's former spouse as family member information nor does it protect an employee's work phone number.

Further, the submitted documents include information concerning other peace officers. We are unable to discern from the submitted documents whether these officers are employed by the city. If these peace officers are employees of the city, then their home addresses and telephone numbers are excepted from disclosure under section 552.117(a)(2) of the Government Code. If these peace officers are not employees of the city, their home addresses and telephone numbers may still be protected from disclosure under section 552.1175 of the Government Code. Section 552.1175 states in pertinent part:

(a) This section applies only to:

(1) peace officers as defined by Article 2.12, Code of Criminal Procedure;

...

(b) Information that relates to the home address, home telephone number, or social security number of an individual to whom this section applies, or that reveals whether the individual has family members is confidential and may not be disclosed to the public under this chapter if the individual to whom the information relates:

(1) chooses to restrict public access to the information; and

- (2) notifies the governmental body of the individual's choice on a form provided by the governmental body, accompanied by evidence of the individual's status.

Thus, these peace officers may elect to restrict access to their home addresses and home telephone numbers in accordance with section 552.1175. If these peace officers do not elect, their information must be released.

Finally, the submitted information includes Texas motor vehicle information. Section 552.130 of the Government Code provides in relevant part:¹

(a) Information is excepted from the requirements of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must withhold the Texas driver's license we have marked under section 552.130 of the Government Code.

In summary, you must withhold the W-4 form, the F-5 Form, and the I-9 Form under section 552.101 in conjunction with applicable federal or state law. We have marked the personal financial information that must be withheld under common law privacy. We have marked the information that must be withheld under section 552.117(a)(2). The marked driver's license must be withheld under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

¹The Office of the Attorney General will raise mandatory exceptions like section 552.130 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Melissa Vela-Martinez". The signature is written in a cursive, flowing style with a long, sweeping underline that extends to the right.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 198126

Enc. Submitted documents

c: Mr. Art Oldner
640 W. Kilpatrick Street
Cleburne, Texas 76033
(w/o enclosures)